THE COMPLEXITY OF AMERICAN GOVERNMENTAL METHODS.

"LIFE, liberty and the pursuit of happiness" formed the foundation stones of the American government. For these rights our ancestors fought, bled and died. To secure and transmit them to posterity intact and undiminished the federal Constitution was framed. To maintain and extend them a great civil war was fought. At the beginning these privileges were restricted: they were denied to the black man and the Indian, and within certain limitations to those white men who did not possess the electoral qualification. Moreover, these inestimable and "inalienable" rights, as the Declaration of Independence described them, were primarily intended only for those who were represented in the adoption of the Constitution and for their descendants. In 1811, Congressman Josiah Quincy defined this position in clear and unmistakable terms. Discussing the bill for the admission of Louisiana, he said:

It is my deliberate opinion that if this bill passes, the bonds of this Union are virtually dissolved; that the states which compose it are free from their moral obligations; and as it will be the right of all, so it will be the duty of some, to prepare definitely for a separation, — amicably if they can, violently if they must. . . . This Constitution was never constructed to form a covering for the inhabitants of the Missouri and the Red River Country, and whenever it is attempted to stretch it over these, it will be rent asunder. . . . Why, sir, I have already heard of six states and some say at no great distance of time, more. I have also heard that the mouth of the Ohio will be far to the east of the center of the contemplated empire. . . . It was not for these men that our fathers fought, it was not for them this Constitution was adopted. You have no authority to throw the rights and liberties and property of this people into the hotchpot with the wild men of the Missouri, nor with the mixed, though more respectable race of Anglo-Hispano-Gallo-Americans, who bask on the sands in the mouth of the Mississippi.

The Constitution, with its ample guaranties of the most substantial liberties, has been extended, however, to the Red River Country, to the Missouri, to Florida, to the Pacific Coast and to the Gadsden purchase; and our country is greater and stronger and more united than ever. So successful has our experiment been, and so inexorable the events indicating the destined course of a free country, that we are now engaged in extending these privileges and liberties, not only to the islands of the sea at our doors, but to those in the far distant southern ocean.

Nor have we been content merely to extend them to new territory: we have extended them to new and larger classes of persons within the old domain. In 1857 the Supreme Court of the United States formally declared, in the Dred Scott decision, that the words

> "people of the United States" and "citizens" are synonymous terms and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty and who hold the power and conduct the government through their representatives. They are what we familiarly call the "sovereign people" and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement [the negroes] compose a portion of this people, and are constituent members of this sovereignty. We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and whether emancipated or not, yet remained subject to their authority, and had no rights or privileges, but such as those who held the power and the government might choose to grant them.[1]

In short, the black man had no rights which a white man was bound to respect.

It required a civil war to change this doctrine; and on July 21, 1868, Congress declared that the Fourteenth Amendment to

[1] 19 Howard, 393.

the Constitution of the United States had been adopted. This provided in express terms that

> all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Two years later, the work of extension was completed in the adoption of the Fifteenth Amendment, which declared that

> the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color or previous condition of servitude.

After the adoption of these amendments, embodying the issues determined by the arbitrament of arms, there was a disposition to restrict their application to the negro race, the Supreme Court expressing a doubt as to whether any discrimination not directed against the negroes as a race would ever be held to come within their provisions.[1] This interpretation, however, has not been followed, and there is now no serious disposition to deny that the broad terms of the amendments should be broadly construed.

The extension of these fundamental rights of life, liberty and the pursuit of happiness to ever-increasing stretches of territory and to ever-increasing classes of persons has been accompanied by a general acquiescence in and acceptance of them by the people. They have become completely incorporated into our political structure and our political ideas, and no amendment or change of government could effectually deprive us of them. The Anglo-Saxon never abandons a political right for which he has fought and bled. One by one he has incorporated in the body of his political ideas these rights and privileges which have in turn become inalienable. The Bill of Rights has grown in length, not diminished; it has been increased in application, not restricted.

[1] Slaughter House Cases, 16 Wallace, 36, 81.

Our forefathers, to protect and conserve the liberty they had won, were careful to surround it with many safeguards. To prevent its dissipation, they introduced into our form of government an elaborate series of checks and balances, which John Adams described and enumerated to be: (1) the states against the general government; (2) the House of Representatives against the Senate, and the Senate against the House; (3) the executive (in a degree) against the legislature; (4) the judiciary against the legislature, the executive and the states; (5) the Senate against the President in the matter of appointments and treaties; (6) the people against the government through frequent elections; (7) the legislatures of the states against the Senate through the election of senators; (8) the electors against the people through the election of President and Vice-President.

Direct action on the part of the people or of any governmental body must have been regarded by the founders as dangerous; otherwise, why, for example, combine in the lawmaking authority a President elected every four years by means of an electoral college, a House of Representatives elected by the people direct for two years and a Senate with members elected for six-year terms by state legislatures? Could a more ingenious device have been contrived to divert the public will and divide responsibility? Democracy in its baldest terms is a government directly by the people. What of democracy is there in a form of government which assigns a governmental function like legislation to three such dissimilar organs as those mentioned?

Again, unless direct action be regarded as of questionable value, why interpose an electoral college between the voters and the selection of the chief executive, or why elect United States senators by the state legislatures? There has been a gradual breaking down of the profound distrust of the people which made the enactment of such electoral provisions possible; but the inactivity imposed on the people by the Constitution has almost unfitted them for the exercise of governmental powers. The man who persistently neglects or refuses to use his arm soon loses the power to use it. So that community which neg-

lects or refuses to exercise the powers of self-government may forget how. Democracy, in the sense in which I have used it, has not failed in America, because it has not been tried.

Our several states, now forty-five in number, have closely followed the federal plan, with but few local modifications. Practically all the checks and balances are preserved. We find the same distrust of direct action, the same distrust of the electors and, in later constitutions to an increasing degree, a distrust of the officials elected. In short, we have an elaborate system of prohibitions, in place of a fundamental declaration of essential principles. Our cities, now numbering many hundreds, have followed in the same footsteps. The "federal" plan is still the most popular one. Checks and balances and distrust of direct action are conspicuous. There has been an almost universal fear lest some official in city, state or nation might have unrestricted power to do something, and that the possession of such power might be attended by dire results to some one.

The consequence of all this is that the American political mind, which, notwithstanding the history of our written constitutions, both state and national, works directly toward its object, has devised the system of responsible party government and has created the party leader, or boss, who does exercise power, who does do something. He is responsible, however, to only a small proportion of the community; and herein lies the danger of the situation. In other words, the complexity of our governmental methods, devised in the first instance to protect our liberties and to prevent their sudden invasion, has produced official irresponsibility and has made the creation of a responsible extra-official organization, or machine, a necessity.

The checks and balances of the federal Constitution were not the only safeguards, so called, with which life, liberty and the pursuit of happiness were buttressed about. Provision was made for frequent elections and for a multiplicity of elective offices, to which was added the doctrine of rotation in office, in city and state as well as in national affairs. Care was taken that no loophole should be left for an aristocracy of officeholders or for the development of a dictator. Long terms and frequent

reëlections, it was thought, might be conducive to efficiency; but they would certainly be subversive of liberty and therefore must be forbidden. Continuity of policy was esteemed of secondary importance. Governors and mayors were accordingly forbidden by express provision from succeeding themselves; and the unwritten Constitution of the United States — for we have an unwritten Constitution — forbids more than one reëlection for a President. The provisions designed by the founders of the republic to perpetuate their hard-won privileges were imbedded in a written Constitution, made as permanent in form and as difficult of amendment as possible.

The makers of state constitutions religiously followed this precedent. These instruments were made as unyielding and as unchangeable as possible. Rigidity was made of prime importance, on the principle that that institution and that community are best off and most to be envied which are most stationary (if I may compare an absolute term). Rigidity, the object of the founders of our federal and state governments, is based on distrust of the people and has contributed to the complexity of our methods.

If the people of the state of Pennsylvania, for example, desire a change in their fundamental law, the amendment must be passed by a majority of the members of both houses of the legislature, advertised in every county in the state, repassed by the majority of the members of the next succeeding legislature, again advertised, and then submitted to the people at the following general election for approval or rejection. This process involves several years of time, a long and constant agitation, a campaign in every district for the election of candidates favoring the amendment, and then a campaign before the people directly on the merits of the issue — a task of such proportions as to make the stoutest-hearted pause.

There is at the present time in Pennsylvania a demand for the personal registration of voters as a preventive of election frauds; but this cannot be obtained without a change in the present constitution, which expressly provides that no elector shall be deprived of his right to vote because his name has not been registered.

To attain the end desired a constitutional amendment is first of all necessary; but before it can become operative such an amendment must go through all the stages mentioned and, if the contention of the governor of the commonwealth is correct, it must go through one more — namely, submission to him for approval or disapproval. This claim has been disputed and is in the courts for determination; but, in any case, the task is by no means completed when we have secured the amendment. So far the door has only been opened for legislative enactment. The act necessary to establish the system in its full detail must then be passed through the legislature in the manner prescribed by the constitution.

Cities, like the states, are subject to rigid statutory requirements. Instead of vesting in our cities the requisite general powers to enable them to settle their own difficulties and solve their own problems, we have made them dependent upon state legislatures for their slightest needs. Suppose Philadelphia should desire to rearrange her ward lines on some equitable basis of population made necessary by new conditions. While it can increase the number of wards by subdivision, it cannot combine wards or rearrange ward lines. This is peculiarly a local matter — one which the people of Philadelphia and they alone can satisfactorily determine; and yet, for any needed change in this direction, Philadelphia must go to the Pennsylvania legislature, where the representative from Cameron County, with 7238 inhabitants, has the same vote and influence as a Philadelphia member.

Municipal affairs, it is maintained, must be considered separately and apart from state affairs; but see how difficult of accomplishment this is. The same legislator who passes upon questions of state policy is called upon to determine matters of purely local concern. The same legislator may also have to vote for a United States senator, and thus national issues are brought into the consideration of state affairs. Efficiency requires a separation of national, state and municipal affairs, one from the other; but our policy in the past has been to combine them in such a way that the most pernicious features of party

government have been fostered and developed — indeed, almost made necessary to secure direct, immediate results.

The American, in ordinary matters, likes directness. In business, industrial and social affairs he comes straight to the point; and so he does, for that matter, in political affairs, except in his written constitutions. In these he still worships at the shrine of complexity and indirection. He has found a way out of the maze of his own theories, however, and through the medium of political parties carries out his intent and purposes with little loss of personal energy. Yet to secure his immediate ends quickly he pays a great price, which is exacted to the last farthing. Practically he surrenders governmental functions to the political party organization, in exchange for direct action on a few subjects of commanding importance. This practice has been so persisted in that party success and supremacy have come to be considered as the ends, rather than as the means to an end.

We rail against bosses, and we denounce party organization, as if that would avail; while we overlook the direct cause of the whole trouble — the complexity of our methods. How is a voter, who is called upon to vote for candidates for twenty-two offices at a single election, to exercise that care and caution which a conscientious citizen should exercise? Yet this was what each elector in one division was obliged to do at the February (1900) election. He had to vote for ten magistrates, whose duties are judicial; for one select and three common councilmen, whose duties are legislative; for three directors of the public schools, who are charged with regulating the schools of the ward and selecting the teachers and the janitors; for a registry assessor, to make a complete list of all the qualified voters in the district; and for a board of three election officers, to receive and count the votes at the next two elections. For these offices the voter had thirty-two magisterial candidates to choose from; three candidates for the select and eight for the common councilmen; five candidates for school director; two candidates for assessor; two for election judge and three for election inspector — in all, fifty-five candidates, concerning whose merits and qualifications

it was incumbent upon the voter to inform himself. Yet this was an "off year."

In the November election of 1898 the same voter was confronted with a still more serious task. He had to select a Governor and a Lieutenant-Governor of the state to serve four years; a secretary of internal affairs, also to serve four years; two judges of the Superior Court, to serve for ten years each; two Congressmen-at-large; one district Congressman; two representatives in the General Assembly; two judges of the Orphans' Court; a district attorney; a controller; a recorder of deeds; a coroner and a clerk of the Court of Quarter Sessions. There were four candidates for Governor; five for Lieutenant-Governor; six for secretary of internal affairs; six for judge of the Superior Court; eleven for Congressmen-at-large; three for district Congressman; five for representatives; two for judges of the Orphans' Court; three for district attorney; five for recorder of deeds; four for controller; five for coroner; and five for the clerkship of Quarter Sessions — in all, sixty-four candidates for judicial, executive and legislative offices and representing national, state and local issues. Is it strange that the average voter accepted the judgment of his party organization and voted for his party ticket without question, instead of investigating the claims and fitness of each of the sixty-four candidates. It was only natural that he should substitute his party's judgment for his own, as it was practically impossible for him to exercise wise discrimination where so many offices and candidates were involved.

Once agree, however, to surrender your judgment to the party and you make the boss possible; for by a further refinement of complexities he possesses himself of the party organization, and then he is in a position to dictate his own terms and defy successful competition for years, if he does not overreach himself. Should he become too arrogant or ostentatious in the exercise of his power, which is likely to happen in time, he will in all likelihood bow his head to the storm and allow it to pass over. Then he, or another like him, is ready to pursue his old practices of giving to the politically lazy and negligent an oppor-

tunity to secure what they feel at the time they need the most, while he takes all the rest — and that is no small amount.

We still maintain, however, that we must afford no opportunity for the creation of a dictator; that there must be frequent change in office and a multiplicity of offices, to prevent the formation of an aristocracy of officeholders; and that we must surround our legislatures with abundant safeguards, lest our liberties be filched away. Consequently, we play directly into the hands of the worst sort of a dictator—an unofficial one. Let us, if necessary, officialize our dictator. Let us recognize that concentration is the order of the day and essential to efficiency. Let us recognize that direct action is better than indirection, and then change our laws and constitutions accordingly.

At present it seems as if nothing short of an overwhelming universal demand, which is to all intents and purposes impossible, or a successful revolution can effect changes in our fundamental law; but why should the majority, if it be a substantial one, be compelled either to wait until every one in the community is convinced of the need of a change, or to resort to force of arms to secure it? On this point Burgess pertinently says:

When I reflect that, while our natural conditions and relations have been requiring a gradual strengthening and extension of the powers of the central government, not a single step has been taken in this direction, through the process of amendment prescribed in that article [Art. V of the Federal Constitution], except as the result of civil war, I am bound to conclude that the organization of the sovereign power within the constitution has failed to accomplish the purpose for which it was constructed. . . . To my mind, the error lies in the artificially excessive majorities required in the production of constitutional changes. According to the census of 1880, it was possible for less than 3,000,000 of people to resist successfully more than 45,000,000 in any attempt to amend the constitution under the present process. The argument in favor of these artificial majorities is that innovation is too strong an impulse in democratic states, and must be regulated; that the organic law should be changed only after patience, experience and deliberation shall have demonstrated the necessity of the change; and that too great fixedness of the law

is better than too great fluctuation. This is all true enough, but, on the other hand, it is equally true that development is as much a law of state life as existence. Prohibit the former and the latter is the existence of the body after the spirit has departed. When in a democratic political society, the well-matured, long and deliberately formed will of the undoubted majority can be persistently and successfully thwarted, in the amendment of its organic law, by the will of the minority, there is just as much danger to the state from revolution and violence as there is from the caprice of the majority where the sovereignty of the bare majority is acknowledged. The safeguards against too radical change must not be exaggerated to the point of dethroning the real sovereign.[1]

We must become accustomed to the idea that we can walk without crutches in political affairs. As we have so long had checks and balances, elaborate methods of amendment and various other complex devices, we feel that they are of the very essence of our liberties and that any departure from them would be sacrilege and fraught with serious consequences to ourselves and posterity. Yet England, whose political heritage we share, has long since abandoned the checks and balances which we copied and still retain, and has maintained a Bill of Rights equal to our own without the intervention of elaborately written documents. Parliament is both the lawmaking and the constitution-amending body. A simple majority of the two Houses of Parliament is sufficient to enact the necessary legislation upon subjects of constitutional law, such as the form and construction of the government, the character and extent of the suffrage and the general principles of liberty. Students recognize that Englishmen have preserved and extended their liberties as successfully as Americans, and in many instances more expeditiously. The former is as jealous of his rights as the latter and as tenacious of them. The case of England is cited, however, not necessarily for the purpose of urging that we follow her example and adopt her practices in their entirety, but simply to show that the priceless heritage of Anglo-Saxon freedom and liberty can be conserved without resorting to the complexities adopted in this country, which have so developed in

[1] Political Science and Comp. Const. Law, I, 151–2.

certain directions as to obstruct the very ends which they were designed to foster.

The case of England also proves that, where directness of action is substituted for indirectness and simplicity for complexity, the party machine and the party boss in the American sense have no chance for growth or development. The legitimate political leader has ample field for activity; but the party boss has little or none, because there is little or nothing concerning the government and its general conduct which the voter, with the exercise of average intelligence and ordinary prudence, cannot himself determine. The English voter expresses his views on national questions when he votes for a member of Parliament, and on local matters when he votes for aldermen. He is not called upon to exercise his judgment in the selection of clerks of the court and secretaries of internal affairs and recorders of deeds. These are clerical positions, and he no more considers it his duty to select them than he considers it a part of his duty to select the multitude of clerks in the Home or Foreign Office.

The American system was undoubtedly a necessity at the time of its adoption. The makers of our Constitution foresaw in their wisdom that they were building for a nation destined to become the refuge of the oppressed of all lands; that a welcoming hand would be held out to all such to make their home here, to cast their lot in with ours and to take part in the conduct of the government. If they had been building for a homogeneous people, they could perhaps have devised a more mobile constitution; but they were not. They must have foreseen that the time would come when some would take part in this government who had had no heritage of liberty and freedom of political training, and that to these the United States would have to give both. This it has done. It has welded heterogeneous elements into a political entity; and, while there may be differences of opinion as to details, as there will always be, and while there may be vigorous discussion as to the application of principles to concrete cases, there is none to raise his voice in derogation of the general principles of liberty, or to deny

the guaranties of life, liberty and the pursuit of happiness to all.

Nevertheless, the safeguards have become master. We have made them the end sought for, instead of the means to an end. We have failed to change our emphasis with changing conditions, or to take note of the transformation of our political conditions. It is as if we should maintain our army, our navy and all our fortifications on a complete war footing for years after peace had been declared. The question of our liberties has been settled and determined. Our government is no longer an experiment. We are now in a position where we can turn our attention to other problems, the most important of which is that of efficient government. Constitutional reform, civil-service reform, ballot reform, municipal reform are the questions to be considered now, and are everywhere under discussion. It was not until after the Civil War that these subjects were even mentioned, and it has only been within the last decade or two that they have come into prominence; but now they are in the forefront, and they cannot be pushed aside or relegated to the rear until they are settled. Efficiency is of the first consideration in business affairs; it must be first in political affairs.

There is no ground for hopelessness as to the outcome, unless the American people lose their interest in public questions and relax their vigilance; and there is no evidence that they have done either. On the contrary, we find on every side a keen interest in the problems of efficiency and a rapidly increasing number of organizations designed to create a sentiment in favor of better government. A people alive to its problems and actively seeking their solution need not despair.

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